U. S. SENATE
Republican Policy Committee
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Who Gains from the Clinton $49.8 Billion "Mexico II" Bailout?

"Indeed, some Wall Street interests would be helped by the [Clinton Administration's proposed] rescue, for it would buoy the value of outstanding Mexican securities and add a measure of safety to future Mexican issues. One beneficiary would be the firm that Treasury Secretary Robert Rubin used to run, Goldman, Sachs & Co., which ranked as the No. 1 underwriter of Mexican stocks and bonds in the U.S. and European markets for 1992 through 1994. In those three years, according to Securities Data Co., Goldman underwrote $5.17 billion in Mexican securities, compared with $2 billion for the securities unit of J.P. Morgan & Co. Third was Bear, Stearns Cos. at $1.81 billion." ["Mexico's Currency Plunges Nearly 10% Amid Worries About U.S. Rescue Plan," *Wall Street Journal*, 1/31/95, emphasis deleted]

"Goldman Sachs . . . helped to fund Bill Clinton's campaign for the presidency. In the 1992 race, the firm's officers contributed more than $100,000 in so-called "bundle" money and raised millions more. According to Federal Election Commission records, Robert Rubin, who is now assistant to the president for economic policy and was then co-chairman of Goldman Sachs, and his wife made a $275,000 contribution from their personal foundation to the New York Host Committee to the Democratic National Convention." ["Goldman Sachs and the White House Connection," by Rebecca Borders and Alejandro Benes, *Washington Times*, 10/28/94. Rubin subsequently became Secretary of the Treasury.]

"This . . . doesn't pass the smell test." [Senator Chris Dodd (D-CT), commenting on House Speaker Newt Gingrich's $4.5 million advance from a publisher, *New York Times*, 1/18/95]

On January 31, 1995, President Clinton and Treasury Secretary Robert Rubin unveiled a $49.8 billion package for bailing out investors burned by the plunge in value of the Mexican peso and faced with the high possibility of Mexico's default on $28 billion worth in *tesobonos* (short-term peso-denominated bonds indexed to the U.S. dollar) that will come due in 1995. This latest plan — dubbed "Mexico II" — replaced "Mexico I," another rescue effort announced by the Clinton Administration barely two weeks before, on January 12.

There are two important distinctions between the now-dead Mexico I and the new Mexico II. First, Mexico I consisted principally of loan guarantees in the amount of $40 billion. Billed as the equivalent of co-signing a loan, these **loan guarantees** theoretically would have involved no cost to the U.S. taxpayer unless there were a default — a greater likelihood than the Clinton Administration wanted to admit. In contrast, as discussed below, Mexico II may involve a **substantial outflow of funds** from the U.S. Treasury.

Second, despite early endorsements by Senate Republican Leader Dole and House Speaker Gingrich, Mexico I, which would have required Congressional approval, was able to garner only lukewarm Republican support on Capitol Hill and next to zero allegiance among members of President Clinton's own party. Mexico II, however, is *based solely on President Clinton's executive authority*, in particular the use of a little-known Treasury Department account called the Exchange Stabilization Fund. On February 1, Senator Murkowski described Mexico II on the Senate Floor as "an end-run around Congress and the American people."

How Much U.S. Money is in Mexico II?

As noted above, Mexico II, unlike its ill-fated predecessor, is expected to involve actual disbursal of funds from the U.S. Treasury as well as providing Mexico's creditors with money supplied by the U.S. taxpayer to such institutions as the International Monetary Fund. The money falls into three major categories:

- **Twenty Billion Dollars Directly from the United States.** This $20 billion has two sources: the Federal Reserve and the Treasury Department's Exchange Stabilization Fund [ESF] . As of this writing, it is unclear how the Clinton Administration will apportion this $20 billion between the two. The ESF, established in 1934 with $2 billion in appropriated funds, presently contains some $25 billion, much of it in the form of Japanese yen and German marks. By law, it is exclusively under the control of President Clinton and Secretary Rubin:

  > "Subject to approval by the President, the fund is under the exclusive control of the Secretary, and may not be used in a way that direct control and custody pass from the President and the Secretary. Decisions of the Secretary are final and may not be reviewed by another officer or employee of the Government." [31 U.S.C. 5302 (a)(2)]

  Historically, the ESF is used as a source of funds for short-term (i.e., under six months) lines of credit in support of reciprocal currency agreements called "swap arrangements." [For further information, see Congressional Research Service's "The Mexican Peso Devaluation and Swap Arrangements," 1/19/95, and "The Exchange Stabilization Fund," 2/9/95.] The loans currently being discussed with respect to Mexico are notable both for their size and their duration (three to five years). As an example of the unusual size of the loans envisioned in Mexico II, the total amount of Mexico's drawings under a series of ESF-supported swap arrangements during the period from 1982 to 1990 was $3 billion.

  In addition, problems for the U.S. dollar, owing to the ESF's depletion pursuant to Mexico II, cannot be ruled out:

  > "As for the use of the Exchange Stabilisation Fund, that too involves serious hazards. . . . The fund, a basket of marks, yen, Swiss francs and so on, is designed for short-term intervention to stabilise the dollar. Depleting the fund could have the result of changing market psychology towards the greenback itself. By trying to stop a run on the peso by this method, . . . the White House

may end up precipitating a run on the dollar instead." ["Bill Clinton Goes for Broke: U.S. Runs Risk of Dollar Heading South to Join Peso," by Ambrose Evans-Pritchard, London *Sunday Telegraph*, 2/5/95, spelling as in original]

- **International Monetary Fund: $17.8 billion.** On January 26, 1995, the International Monetary Fund (IMF) at U.S. urging, tentatively approved $7.8 billion in loans to allow the Mexican government to borrow to support the peso in foreign exchange markets. The Clinton Administration's Mexico II package proposes to add another $10 billion to that amount. However, due to the participation of other, mainly European, countries in the IMF, this part of Mexico II might not be as simple as it sounds:

> "In an unprecedented move . . . , Britain and five other European countries [initially] refused to endorse President Bill Clinton's plan to draw on $17.8 billion . . . of IMF funds to help stabilise the Mexican peso. There were serious grounds for objection. The Europeans were given less than an hour to study the biggest IMF bail-out in history, one that could have the effect of diverting money from other needy countries in Eastern Europe and the developing world. But the refusal to jump to attention at Washington's command is an implicit vote of no confidence in the current decrepit and feckless White House." [London *Sunday Telegraph*, 2/5/95]

- **Twelve Billion Dollars More from Other Sources.** According to the Clinton Administration, other countries (no doubt at American urging) will contribute to the effort: $1 billion from other Latin American countries and $1 billion from Canada (which is facing its own currency stability problems). In addition, under Mexico II the Bank of International Settlements (BIS) will add another $5 billion to a line of credit in that amount announced on January 2, 1995. According to the Center for Security Policy (CSP), a conservative foreign policy think tank, this is no less unusual than the Clinton Administration's planned use of the ESF:

> "The other source of multilateral funds — the Bank for International Settlements — which is expected to double the $5 billion credit line it is currently providing Mexico — has its own problems. First, its short-term financing capabilities represent a maturity mismatch given Mexico's medium-term restructuring requirements. Second, while the conditions for disbursement are not known at this point, the reality is that the BIS is a European-dominated institution. . . . [I]t is far from clear why the Germans and others would fast-track disbursements of which they do not altogether approve." ["Get Ready for Mexico III? 'Our Problems Are Over' — Not!", Center for Security Policy, 2/1/95]

So, assuming Mexico II goes forward entirely according to the Clinton Administration's plan, what is the bottom line for the United States? As noted above, the total amount, from all sources, is estimated at $49.8 billion. Of this amount, the $20 billion from the ESF/Federal Reserve is all American money. The second pot of money, $17.8 billion from the IMF — which is the beneficiary of capital replenishments by the U.S. taxpayer via the Foreign Assistance Authorization Act and the Foreign Operations Appropriations bill — consists, by the informal estimate of Roger W. Robinson, a member of CSP's board and former Senior Director for International Economic Affairs at the National

Security Council, of funds approximately one-fourth of which are provided by the U.S. taxpayer: so, add another $4.45 billion. Also, as estimated by Robinson, about 10 percent of the $10 billion from the BIS is U.S. in origin: another $1 billion (assuming the $1 billion each from Canada and Latin America are not also roundabout financed by the United States). Accordingly, the total commitment of U.S funds under the Clinton Administration's Mexico II would be something over $25 billion. Reportedly, transfer of funds has begun:

> "The money for the Mexican bailout is already pouring across the border. By the first week in February, the U.S. Treasury had sent $2.5 billion from an existing $9 billion swap fund created before the present crisis. The [IMF], despite intense objections from many European governments, sent $7.8 billion." [*Forbes*, 2/27/95]

A U.S. Taxpayer Financed Bailout: *For Whom?*

> "Although the administration emphasizes that U.S. exports, and therefore jobs, will be hurt if the Mexican economy slides into a prolonged contraction, the rescue plan remains unpopular. Many citizens view it as little more than a bailout of a foreign country, plus a **handful of investment firms.**" [*New York Times*, 1/31/95, emphasis added.]

To date most public discussion of the Mexican debt crisis has centered on the consequences for the Mexican and U.S. economies of either putting in place a bailout package, or of declining to do so; on the specifics of the proposed bailout packages; and, finally, on the Clinton Administration's determination to make good on the bad investments of a number of U.S. financial institutions.

However, until now very little attention has been paid to the more specific questions: ***Exactly which firms (and individuals) will benefit from the Clinton Administration's bailout, and what is their connection to the Clinton Administration?*** Part of the reason may be a simple lack of information. Major Wall Street brokerage houses and investment banks are not in the habit of revealing their clients' identities and the amount of money they may have riding on various investments. For that reason, the information in the January 31, 1995, *Wall Street Journal* article, cited at the beginning of this paper, to the effect that one firm — Goldman, Sachs & Co. — is the underwriter for some $5.17 billion in Mexican paper (at an undisclosed degree of risk absent action by the United States to restore the peso's value and to allow the Mexican government to make good on its debts) is noteworthy. It is even more noteworthy in view of the fact that the firm in question has a longstanding and cozy relationship with the 1992 Clinton presidential campaign, with the Clinton White House — and even with the legal defense fund established to pay the Clintons' legal expenses connected with the Paula Jones sexual harassment lawsuit and the Whitewater investigation!

Goldman Sachs: An Old Friend of Bill

The strong support for the 1992 Clinton presidential campaign by Goldman Sachs officials — notable among them then-Goldman Sachs co-chairman and current Treasury Secretary Rubin — is well known. Less well-known is that firm's connection to the

President's Legal Defense Trust, which was set up in June 1994. These interrelationships were summarized in October 1994 (before the peso crisis struck) in an essay by Rebecca Borders and Alejandro Benes, "Goldman Sachs and the White House Connection," published in the *Washington Times*. Important excerpts follow; the full text is available from the Republican Policy Committee:

- "Goldman Sachs . . . helped to fund Bill Clinton's campaign for the presidency. In the 1992 race, the firm's officers contributed more than $100,000 in so-called 'bundle' money and raised millions more. According to Federal Election Commission records, Robert Rubin . . . and his wife made a $275,000 contribution from their personal foundation to the New York Host Committee to the Democratic National Convention." [According to the *Los Angeles Times* of July 25, 1992, "Goldman Sachs employees and their families were responsible for the biggest contribution from a single firm."]

- "Michael Berman is a Washington lobbyist. He and his firm, the Duberstein Group, represent Goldman Sachs in its interests in Washington. Mainly, those interests have to do with keeping banks out of the brokerage business, said sources at Goldman Sachs. On July 31 [1994], the Washington Post reported, 'Berman is raising funds for Clinton's legal defense fund, after working with White House counsel Lloyd N. Cutler in setting up the fund.' . . . Mr. Berman maintains a close relationship with Mr. Clinton and with Hillary Rodham Clinton. Until last spring, Mr. Berman was one of the few non-employees to have 'special access' roaming privileges at the White House. He said that whenever he went to the White House to lobby anyone, he always went through 'proper channels.'" [Mr. Berman appears on the list of contributors to the Clintons' legal defense fund (which was only released, with great reluctance, in February 1995) as having made the maximum allowable gift of $1,000.]

- "The general counsel of the President's Legal Defense Trust is Bernard Aidinoff, who belongs to the prominent law firm of Sullivan and Cromwell, which is based in both New York and Washington. Mr. Aidinoff confirmed that Sullivan and Cromwell has connections to Goldman Sachs. 'The firm does a lot of work for Goldman Sachs. Goldman Sachs is a client of Sullivan and Cromwell and I am a partner in the firm,' he said." [Mr. Aidinoff is also a $1,000 contributor to the Clintons' legal defense.]

- "Another former co-chairman of Goldman Sachs, John Whitehead, who is a Republican, is a trustee of the Presidential Legal Defense Trust. A phone call to Goldman Sachs in New York will get you to John Whitehead's office. He is currently a limited partner in the firm."

- "Goldman Sachs itself has had a relatively long association with Arkansas and Bill Clinton. In the late 1980s, the investment banking firm helped to underwrite $400 million in bonds for the Arkansas Development Finance Authority (ADFA). An early recipient of the ADFA bond money was POM, a parking-meter manufacturer in Russellville, Ark. POM was run by Seth Ward II, the brother-in-law of Webster Hubbell, former associate attorney general in the Clinton Justice Department and close

'Friend of Bill.' Mr. Hubbell served as a lawyer for POM." [ADFA was created by then-Governor Bill Clinton in 1985; under state law, it is under the governor's direct control.]

Should Robert Rubin Have Recused Himself on Mexican Bailout?

In the view of an impeccable left-wing source — *The Nation*, which strongly opposed the North American Free Trade Agreement (NAFTA) — Treasury Secretary Rubin's direct involvement in Goldman Sachs's Mexican lending was substantial prior to his joining the Clinton Administration in 1993:

> "According to [Hermann] von Bertrab, [described by *The Nation* as a Mexican businessman who was enlisted by then-President Carlos Salinas de Gortari to be director of Mexico's Washington NAFTA office], Democratic members of Congress backing NAFTA urged Mexican government officials 'to start having some connection with the Democratic party and the Clinton campaign.' Von Bertrab admits he heeded the advice, but he will not say who in the campaign was approached by Mexican government reps. They had a wealth of choices. Several Clinton advisers were close to Mexican business interests or fans of NAFTA. (Some Clintonites were registered foreign agents.) One top adviser was **Robert Rubin**, who was at the time co-chairman of **Goldman, Sachs and Company**, the Wall Street investment banking firm. **Rubin personally handled several of Goldman, Sachs's most important clients, including the government of Mexico.** He would be named by Clinton to chair the National Economic Council, [and later, to head the Treasury Department.] **(He has since recused himself from matters involving Mexico.)**" ["Can Mexico and Big Business USA Buy NAFTA?, by Charles Lewis and Margaret Ebrahim, *The Nation*, 6/14/93, emphasis added]

However, as of 1995, it appears that Mr. Rubin is *anything but recused* in relation to the Clinton Administration's current determination to come to the rescue of Goldman Sachs, among other firms with a major stake in the Mexican crisis. (Indeed, in light of the statutory prohibition against any review "by another officer or employee of the Government" of the Treasury Secretary's decisions regarding the Exchange Stabilization Fund, as cited earlier, **it is fair to ask if Mr. Rubin's decision to make available up to $20 billion from that fund for Mexico II ever was, or could be, coordinated with Treasury ethics officials.**) Despite his substantial past involvement with Mexico on behalf of Goldman Sachs, and despite *The Nation*'s assertion that as of 1993 he had recused himself from Mexico-related matters, Mr. Rubin, according to National Economic Council, declined to participate in Mexican affairs only for a period of one year: "He will recuse himself for one year from specific dealings with a group of 42 of Goldman's clients he dealt with, including, according to [his financial disclosure] report, domestic and foreign corporations and the governments of Mexico and Taiwan." ["Million-Dollar Advisers to the President; Rubin, Others Report Large 1992 Incomes," *Washington Post*, 3/23/93] Despite repeated requests from the Republican Policy Committee, the White House has declined to provide a copy of Mr. Rubin's recusal statement.

The Code of Federal Regulations contains specific guidance on the recusal (technically, "disqualification") by officials on certain matters where there may be even an appearance of partiality. Some of these may apply to Mr. Rubin and his handling of the Mexican bailout:

"(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, . . . and where the employee determines that **the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality** in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section. [. . .]

"(d) [Specifies procedures for authorizing an employee's participation in a particular matter] based on a determination, **made in light of all relevant circumstances**, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. [. . .]

"(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, the employee shall not participate in a particular matter involving specific parties when he or the agency has concluded . . . that the financial interest of a member of the employee's household . . . is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter. [. . .]

"(a) *Disqualification requirement.* Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which the former employer is a party . . . if he received an extraordinary payment [generally defined as over $10,000 value] from that person prior to entering Government service. . . . "

[5 C.F.R. Ch. XVI Sec. 2635.502-3, emphasis added. Paragraph (d) refers to a related section of the United States Code, 18 U.S.C. 208, "Acts affecting a personal financial interest," which includes penalties of a $10,000 fine and/or a period of imprisonment not to exceed two years.]

To what extent does Mr. Rubin's possible stake in the Mexico II bailout plan go beyond his past ties to Goldman Sachs to his current financial holdings? That is, in the words of the conflict of interest regulations cited above, what exactly are the "**relevant facts**" and "**relevant circumstances**" that determine whether he should have recused himself from the Mexican debt issue, or, alternatively, could participate only with agency authorization? A memorandum to Mr. Rubin, dated January 17, 1995, from Dennis Foreman, Treasury's Deputy General Counsel and Designated Agency Ethics Official, authorized him "to participate fully in the resolution of the Mexican foreign exchange issue." The memorandum further states:

> **"Although I have assumed that Goldman's interest in this matter could be substantial, I believe that there is no basis to question your ability to act impartially."**

The January 17 Foreman/Rubin memorandum also states that Mr. Rubin has "no financial interest in or other conflict of interest with respect to Goldman . . ."; this assertion, as an attorney in the Treasury General Counsel's office informed the Republican Policy Committee today, is based on a review of Mr. Rubin's public financial disclosure report (SF 278, dated 1/3/95) by Mr. Foreman and by the Office of Government Ethics. However, while examination of that report does not clearly show that Mr. Rubin has a continuing financial tie to Goldman Sachs, neither does it rule out any such tie. In fact, the publicly available information regarding Mr. Rubin's possible interest in that firm, both from his disclosure report and from media sources, is quite meager. (A more detailed financial disclosure statement is on file at the Senate Committee on Finance but has not been released to protect Mr. Rubin's privacy.) According to *The Economist* of December 10, 1994, Mr. Rubin's salary for 1992, his last year with Goldman Sachs, was $26 million; his net worth is over $100 million. In addition, "Rubin made at least $3.7 million from other investments."

[*Washington Post*, 3/23/93] However, very little is known as to the nature of the buyout of Mr. Rubin's interest in Goldman Sachs when he left that firm in 1992: "He . . . converted his multimillion-dollar interest in Goldman Sachs Group L.P. into a bond, paying a fixed dividend, which he placed in a blind trust." [*Washington Post*, 3/23/93] On his public financial disclosure form, Mr. Rubin simply lists the bond's value as "over $1,000,000"; also according to the form, the bond produces interest income of an unspecified amount. Regarding that income, the form states: "Pursuant to Federal regulations, Mr. Rubin is prohibited from being provided information as to the Trust's income." This spare summary avoids key details — such as the total size of the buyout and the exact nature of the instruments involved; the size of his Goldman Sachs bond and the proportion it constitutes in Mr. Rubin's trust; the amount of the "fixed dividend" he derives from the bond; and whether he will receive any future income from Goldman Sachs financial instruments — that are relevant to the question of conflict of interest and the need for recusal.

Conclusion: A Need for Full Disclosure

Clearly, nothing in the foregoing constitutes a "smoking gun" or even a suggestion of impropriety in the handling of the Mexican debt crisis by the Clinton Administration generally and Treasury Secretary Rubin specifically. The relationships documented above do, however, raise the need for full disclosure with regard to the following three questions:

1. Why has not Secretary Rubin recused himself from the Clinton Administration's Mexican bailout effort? Specifically, what does he (along with perhaps other Administration officials) stand to lose if a bailout plan is not put into place?

2. Specifically, what firms and individuals — current holders of Mexican debt — are the real beneficiaries of the Mexico II plan? These intended beneficiaries of taxpayer moneys should be identified by name and amount.

3. What are the ties between these beneficiaries and officials of the Clinton Administration responsible for Mexico II? For example, are any of Secretary Rubin's former clients at Goldman Sachs among the beneficiaries of the rescue plan?

As cited at the beginning of this paper, the "smell test" is sometimes applied to situations where there is no clear evidence of wrongdoing but where the facts might appear to the reasonable observer to be of questionable propriety. Whether or not that appearance is accurate can only be judged in light of detailed answers to these three questions.

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